



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170181

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 7, 2016, by telephone. Hearings set for December 2 and 9, 2015, were rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS from (a) April through August 2012, (b) May through August 2013, and (c) June through August 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], ES Spec.

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.

2. The petitioner's household received FS from at least February 2011, forward. An eligibility notice mailed to her on September 12, 2011, advised that she was required to report to the Department within deadlines if the five-person household's income exceeded \$2,836.
3. *April – August 2012*: The petitioner's household income exceeded \$2,836 as of February 2012, when it totaled \$2,885. The petitioner was employed through the [REDACTED], and her husband was employed at [REDACTED]. The husband's monthly income of \$1,449.53 did not significantly change in 2012. However, the petitioner's earnings increased. Paid bi-weekly, the petitioner received an IRIS check for \$1,072.50 on February 29, 2012, and a check for \$929.50 on March 15, 2012. Her increased earnings put the household over their net income limit from February through August 2012. The petitioner did not report this increase. She should have reported the February increase by March 10, to affect benefits beginning in April 2012. The result is an FS overpayment period running from April through August 2012.
4. *May–August 2013*: Income limits change once per year. On March 1, 2013, the Department mailed an FS eligibility notice to the petitioner, advising that she should report, within deadlines, gross monthly income exceeding **\$2,297.50**. The household's gross income in March 2013 was \$3,482.46. Their income kept the household above the net income limit through August 2013. Thus, she should have reported the higher income by April 10, to affect May benefits. She did not report this. Instead, she reported her income of \$224.67 from [REDACTED] and \$1,140.26 for her husband. If she had reported correct income, the household would have been ineligible for FS from May through August 2013.
5. *June–August 2014*: On April 15, 2014, the Department mailed an eligibility notice to the petitioner, advising her to report within deadlines if her household income exceeded **\$2,325.83** monthly. The household's gross income in April 2014 was \$3,633.03. This should have been reported by May 10, to affect June benefits. The higher income, which came from the petitioner's Unemployment Compensation, was not reported. The household's actual gross income was \$4,048 for June, \$3,622 for July and \$3,466 for August, which caused the household to be over the net income limit in those months.
6. The agency learned of the petitioner's 2012 - 2014 income when it received an employer wage match report from the Wisconsin Department of Workforce Development in October 2014. In reviewing the petitioner's FS calculations, the agency discovered that the petitioner had under-reported her earnings in 2012, under-reported her and her husband's earnings in 2013, and failed to report her Unemployment Compensation in 2014.
7. On September 25, 2015, *Foodshare Overpayment Notices* and worksheets were sent to the petitioner, advising that she had been overpaid (a) \$1,560 for the 4/1/12 – 8/31/12 period (claim # [REDACTED]), (b) \$1,724 for the 5/1/13 – 8/31/13 period (claim # [REDACTED]), and (c) \$1,143.00 in FS for the 6/1/14 – 8/31/14 period (claim # [REDACTED]). Exhibit 2. The overpayments were due to client error.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households.

- (a) *General*. (1) A recipient claim is an amount owed because of:
 - (i) ***Benefits that are overpaid*** or
 - (ii) Benefits that are trafficked. ...
- (3) As a State agency, you must develop a plan for establishing and col-

lecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. There is a one-year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 4/1/12 – 8/31/14 PERIOD (non-contiguous).

Neither the arithmetic of the agency's overpayment determination, nor the petitioner's failure to report her Unemployment Compensation in 2014 are in dispute. The petitioner vaguely asserted that her earnings might not have been as high as the figures obtained by the agency; however, she produced no documentation to clarify the household's earnings. In contrast, the Department obtained all wage records from 2012 – 2014 to prove the amount of the petitioner's household income. *See*, Exhibits 1B,C & 4. The Department also obtained her Unemployment Compensation records to verify the amount of those unreported payments. Those records show that the household was over the limit during the identified overpayment months. The petitioner was required to report her income when it went over the relevant limits in 2012 - 2014 and she did not do so. Her failure to report means that her overpayments for the months in which she received excess income is "client error," rather than "worker error." Because the overpayment was caused by client error, the agency is allowed to go back to April 2012 in its recovery effort. It may do so here.

The only objection to the FS calculation that the petitioner identified with clarity was the amount of rent budgeted in 2012. She agreed that the rent was \$800 in 2013 and 2014. The petitioner did question why the agency only budgeted \$300 rent for the April – August 2012 calculations. The answer is that the petitioner's mother, who was not part of her FS household, lived in the same residence as the petitioner from at least August 2011 into late July 2012. At the time, the petitioner reported that her mother was paying \$500 of the rent, and that the petitioner was paying \$300. Therefore, only \$300 was correctly budgeted as the petitioner's rent at that time.

The petitioner also appealed from a Medicaid/BadgerCare Plus overpayment determination. Because different rules apply, that decision will be issued separately.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$4,427 FS (\$1,560 + \$1,724 + \$1,143) from April 2012 through August 2014 (not all months), due to client error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be *received within 20 days after the date of this decision*. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 *and* to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of February, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 5, 2016.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability